IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 18066 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HOTEL ROYAL

Versus

BRANCH MANAGER

Appearance:

1. Special Civil Application No. 18066 of 2003

MR BG JANI for Petitioner No. 1

MR PV NANAVATI for Respondent No. 1

MR VIBHUTI NANAVATI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 09/12/2004

ORAL JUDGEMENT

#. In this petition filed under Article 226 of the

Constitution of India, the petitioner has prayed for appropriate writ, order or direction directing the respondent to release the amount of Rs.5,08,681/- towards the insurance claim of the petitioner with interest with liberty to accept the same under the protest so that the petitioner can approach the other appropriate forum for claiming rest of the amount of insurance claim.

#. Mr.Jani for the petitioner has relied upon the communication dated 13.1.2001 by which the Insurance Company has offered the petitioner the claim amount to the tune of Rs.3,38,979/- on depreciating value basis. In the said communication, it is also stated that, as, the petitioner has not repaired the building and on getting the building repaired and upon submitting the bills and vouchers in original with the company and post-repair inspection, further amount of Rs.1,69,702/will be released. Mr.Jani has submitted that, in spite of the aforesaid fact, the respondent Insurance Company has not released the aforesaid amount.

#. Mr.Nanavati, learned advocate appearing for the respondent Insurance Company, has submitted that the Insurance Company has always shown their readiness and willingness to make the payment of Rs.3,38,979/- to the petitioner, but the petitioner is not accepting the same. He submitted that so far as release of remaining amount of Rs.1,69,702/- is concerned, in view of the fact that the building is not repaired, there is no question of making any payment at this stage.

#. At this stage, Mr.Jani has submitted that the petitioner is ready and willing to accept the aforesaid amount of Rs.3,38,979/- under the protest subject to approaching appropriate forum with regard to rest of the claim for which Mr.Nanavati for the Insurance Company has no objection, more particularly, in view of the fact that in the letter dated 13.1.2001, the Insurance Company has already offered the said amount.

#. Under the circumstances, the respondent Insurance Company is directed to make the payment of Rs.3,38,979/- to the petitioner within a period of 15 days from the date of receipt of the writ of this order. The petitioner may accept the said amount under the protest subject to rights available to the petitioner to approach before the appropriate forum for rest of the claim.

#. In view of the above, this petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

Direct service is permitted.

(M.R.Shah,J)

(pathan)